IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO. 599 OF 2003

Jijaba Tukaram Mohite
(since deceased through LRs.)
Smt.Tarubai Jijaba Mohite & ors. ... Appellants.
Versus.
Smt.Kusum Nana Mohite & ors. ... Respondents.

Shri N.V.Walavalkar with Shri G.S.Keluskar for the Appellants.

Shri G.S.Godbole for the Respondents Nos.1 and 2.

CORAM : ABHAY S. OKA, J.

DATED : 3rd March, 2005.

P.C.:

1. Heard Shri Walavalkar for the Appellants and Shri Godbole for the Respondents Nos.1 and 2.

2. The Appeal is filed by the original Defendants Nos.1 to 4. The trial Court dismissed the suit filed by the Respondents Nos.1 and 2 by relying upon bar created by section 31 of the Bombay Prevention of Fragmentation and Consolidation of Holding Act, 1947. The Appellate Court after considering the provisions of the said section has rightly came to the conclusion that the bar is not attracted.

3. After considering the evidence on record and after examining the documents at Exhibits 73 and 89, the Appellate Court has recorded a finding that the

transaction between the parties was of mortgage by conditional sale. While coming to the said conclusion, the Appellate Court has considered the well settled principles of law governing the interpretation of documents.

4. I find no perversity in the approach of the Appellate Court. No substantial question of law arises. The Second Appeal is dismissed with no order as to costs.

Judge.